Alaska Criminal Justice Commission
WORKGROUP ON BARRIERS TO REENTRY

Meeting Summary

July 26, 2017, 9:30 AM

Denali Commission Conference Room
510 L Street, Suite 410
Anchorage, AK
and teleconference

Commissioners: Brenda Stanfill, Jahna Lindemuth, Greg Razo, Joel Bolger, Steve Williams

Participants: Rob Henderson, Regan Williams, Karen Cann, Nancy Meade, Doug Wolliver, Donald Revels, Allison Biastock, Jeff Edwards, Teri Tibbet, Natasha McClanahan, Alysa Wooden, Laila Allen, Suki Miller

Staff: Susanne DiPietro, Barbara Dunham

1. **Ban the Box**

Barbara Dunham explained that the full Commission had not had time at its last meeting to discuss the proposed recommendation for a pilot Ban the Box program within one state agency, which had been agreed on at the last Barriers meeting. She noted this was just a draft and could be reworded. Brenda Stanfill asked whether this was the same proposal that had been discussed last year. Barbara said that it was. Brenda noted that a lot of work had gone into crafting that proposal last year. Greg Razo moved to forward this draft recommendation to the Commission. Steve Williams seconded the motion.

Nancy Meade asked whether the Department of Administration could choose which agency; group members confirmed this was the case. Rob Henderson asked whether there was a time frame for the program; he noted that Ban the Box was not evidence-based. Susanne DiPietro said that staff analyst Brian Brossmer's research showed the evidence was inclusive.

Brenda said she knew that program evaluations were expensive—would it be possible to include on in this recommendation? Susanne said that evaluations don't have to be expensive, and it depends on the kind of evaluation you want. Brenda said she didn't think every Commission recommendation had to be based on peer-reviewed evidence; it would be good to study the pilot program but she didn't want the recommendation to come with a large fiscal note.

Susanne asked if staff should add language recommending a study of the pilot program. Brenda said yes. Greg said it could be as simple as looking at who was hired compared to other agencies. He suggested including language suggesting that the Department seek assistance from UAA to evaluate the pilot program. He also suggested presenting the research on Ban the Box to the Commission along with the recommendation. Brenda noted that a state agency would be less likely to screen out applicants because of a name; this pilot may be successful.

Greg called for a vote on the motion (with the language in the draft amended as discussed). There was no opposition.

2. Clemency

Barbara Dunham explained that the group had agreed to forward a recommendation to the Commission and a draft recommendation had been circulated; like the Ban the Box recommendation, the full Commission had not had time at its last meeting to discuss the draft.

Rob Henderson and Jahna Lindemuth explained that there were some factual inaccuracies with the draft regarding the clemency application process and who drafted the proposed changes to the process—it was the parole board administrator, not the ECAC. They also pointed out that as the pardon power rests solely with the governor, the last sentence of the recommendation (outlining priorities for addressing applications) should be removed. Jeff Edwards also noted that in terms of addressing the backlog, the governor's office would need to initiate that process.

Suki Miller asked whether the Commission would recommend that former applicants reapply. Jahna noted that the recommendation asked the governor's office to address the backlog. Jeff said that if that happens, the parole board would then send out a packet to each applicant to restart the process.

Greg moved to forward the recommendation with the changes proposed by the Department of Law. Jahna seconded the motion. There was no opposition. Jahna noted that the Commission can work with Jeff on the final draft to make sure the wording is accurate.

3. Sealing

As with Ban the Box and clemency, a draft recommendation to amend the sealing statute had been circulated but not discussed at the last Commission meeting.

The group first clarified what was meant by sealing; sealing at the court system means the file will be removed from CourtView and sealed so only the parties and judge on the case may access it; sealing at DPS means the record is only accessible in very limited circumstances, and will not appear in background checks or APSIN. (There are two types of background checks provided by DPS: one that anyone may access for a fee, and a more intrusive check that is for employers of caregivers. The former will reveal convictions but not charges; the latter will reveal both convictions and charges.)

Brenda Stanfill asked whether this was really just a form of expungement and whether this should be included in that discussion. Nancy Meade noted that this discussion began before AS 22.35.030 (removing records from CourtView where cases have been dismissed or a defendant acquitted), which has fixed a lot of these issues. The focus of the discussion now is how to get these records off APSIN and background checks.

Brenda and Jahna Lindemuth said they were uncomfortable taking charges off of APSIN. Barbara asked whether this was the case for charges based on false accusations or mistaken identity. Rob Henderson suggested that individuals in those cases should go through a court hearing. He has done one of these evidentiary hearings, though they are rare. The defendant had to prove mistaken identity beyond a reasonable doubt. Nancy noted that changing the standard from beyond a reasonable doubt

to clear and convincing evidence would have a smaller fiscal note. Rob noted that Law has also asked DPS and the Court System to remove records when it was clear the charges were completely unfounded due to a false accusation or mistaken identity.

Brenda said she was uncomfortable having a full evidentiary hearing for every DV case that was dismissed for lack of evidence. Barbara noted that attorney Ryan Bravo had submitted an alternate proposal to amend AS 12.62.180 that clarified and strengthened the current administrative process for sealing records; this would only apply to cases of mistaken identity and false accusation.

Brenda suggested that the group take a look at expungement and then come back to this topic; it may be covered by the expungement discussion.

4. Expungement

Though discussed at previous meetings, an expungement proposal had not been universally agreed upon; staff had circulated some ideas. Susanne DiPietro noted that expungement could take many forms. Nancy Meade said the purpose of expungement was essentially to let people deny the existence of a conviction on an application and be backed up in that assertion with the results of a background check. Jahna Lindemuth noted that another option would be to allow people to say the record was expunged.

Brenda Stanfill said that to her mind there were two problems to be solved—cases involving a successful SIS (the Commission has received a good deal of testimony from individuals with an SIS who had been under the impression the conviction would disappear entirely), and cases where an individual has shown real evidence of rehabilitation over a period of time.

Nancy noted that it was possible to make this process automatic after a number of years has passed—that option would be nearly free and it would be easy to accomplish. Brenda countered that she wanted a way to be able to capture those that have truly turned their lives around. Rob Henderson suggested that those people might be candidates for certificates of rehabilitation. Brenda and Susanne said that the group had previously looked at certificates of rehabilitation and research tended to show that they weren't very effective—they weren't used often in the jurisdictions where they were available and there was no evidence they helped. Rob wondered if there was a way to make them more effective and Brenda said it might be possible.

Susanne suggested looking at expungement of offenses that have been decriminalized first. The group discussed the offenses that were decriminalized in SB 91.[1] The group generally agreed that failure to appear (FTA) and violation of conditions of release (VCOR) should not be eligible for expungement. Nancy said it would be a relatively easy fix to take these offenses off of CourtView—with the exception of Driving with license suspended, which she said was hard to tell in the electronic system whether it was based on a DUI or not.

[1] Disregard of highway obstruction, obstruction of highways, attending an exhibition of fighting animals, gambling, violating conditions of release, failure to appear, and driving with license suspended for an offense other than DUI/Refusal were all reduced from misdemeanors to violations in SB 91.

Natasha McClanahan noted that her office had received many calls about expunging minor consuming alcohol offenses (MCA).[2] Greg Razo noted that many job applicants at CIRI got flagged for having consumed a beer when they were teenagers long ago. Rob said that for a long time, the only MCA that was a misdemeanor was the defendant's third or fourth misdemeanor (though all MCAs older than 1995 were misdemeanors).

Rob Henderson wondered if the group could agree on a process. Brenda wondered if the process could be done with a form and no court hearings. Karen Cann noted that it would be good to have the defendant jump through certain hoops with a determined outcome—it would be nice to inform defendants who have made some mistakes that there is a way toward expungement if they meet certain benchmarks.

Rob suggested creating a list of offenses that would be suitable for expungement and then addressing the process once those offenses were identified. Nancy cautioned that any process would cost some money. Brenda suggested that reinvestment dollars could be used for those offenses that were decriminalized in SB 91 (as a one-time expenditure).

Justice Bolger said the process of sealing a court file is pretty drastic—removing a record from CourtView and labelling a file confidential is easier. Nancy said this was essentially the former version of an expungement bill, but it was controversial and did not play well in the media. Rob said this was because the public felt they had a right to know about certain offenses.

Brenda reiterated that she also wanted to have an option that has meaning for those who have turned their lives around—a confidential designation would be sufficient for those applicants. The group noted that while there was a process for designating files as confidential in the court system, there was no similar designation at DPS—a record would either be sealed or not. (It was suggested that staff check with Kathy Monfreda at DPS to verify this).

The group went on to discuss potential expungement of nonviolent misdemeanors. Though the proposal that had been circulated suggested tolling a period of time for expungement from the date of an offender's unconditional discharge ("off paper" in DOC parlance), group members noted that this would not necessarily mean that the offender had paid all restitution and fines. Brenda suggested that expungement would need to be conditioned on proof of payment of both restitution and fines.

Nancy reiterated that this kind of individualized determination would have a cost—it might mean opening up courtrooms on Friday afternoons, for example. Rob said that nevertheless Law would like to have hearings, and suggested reinvestment money could go towards the cost. Nancy suggested that the Department of Law could just sign off on the application. Rob agreed that that would solve the question of creating a legal mechanism, but would not address what to do in case of disputes. Doug Wooliver suggested building guidelines into the statute. Brenda said that there might then be concerns that Law would say "no" too often. Nancy said that victims' advocates might do the same.

Justice Bolger said that there might be situations in which an offender does not have any new criminal activity on the books but there are indicators that the offender has not been rehabilitated—this

[2] Until 1995, MCA was a class A misdemeanor; it then became a violation. In 2001, the legislature created a tiered MCA system, with different punishments for first, repeat, or habitual offenders. The habitual MCA offense was a class B misdemeanor. In 2016, SB 165 did away with the tier system, making all MCA offenses violations.

is where judges would need to find positive evidence of rehabilitation. Karen added that offenders could be off probation relatively quickly—and would not have a PO watching them. Susanne pointed out that misdemeanants will not have anyone watching them at all.

Brenda said she liked the idea of having a certain passage of time with no new arrests. Nancy noted that the Dept. of Law wanted a certain amount of discretion. She wondered what the minimum length of time would be that everyone could agree on was—10 years? Brenda said perhaps, and certain offenses would have to be excluded—sex offenses, for example.

Doug suggested starting with baby steps to make the idea more palatable to the legislature. For example MCAs would probably be acceptable. Susanne added that SIS would be a good addition, as the Commission had heard a lot of testimony from people who thought those convictions would disappear. Brenda noted that some judges thought so too. Justice Bolger said that a successful SIS might be a more reliable indicator of rehabilitation than just the passage of time. Brenda said that it would also account for victim notification. Nancy said that it might not account for payment of fines and restitution.

Rob suggested compiling a list of potential offenses that would be uncontroversial for expungement. Jahna said Doug's point about being conservative to begin with was well-taken; if the process works well it could be expanded over time. Brenda said she agreed and didn't want to step into something as controversial as SB 91. There are some offenses that won't be controversial for expungement.

Doug said that even just MCA and SIS would cover a lot of people. Susanne said that those are the ones that the Commission has heard a lot about, along with DUI. Jahna said that people with only one DUI cover a broad cross-section of Alaskans. Brenda thought the single DUI convictions could be automatically expunged after 15 years, and Rob agreed. Brenda asked whether drug possession, and/or marijuana possession, should be included. Nancy said that might be more controversial.

5. Public comment

There was an opportunity for public comment but none was offered.

6. Future meetings

The next meeting was set for August 9 at 9 a.m.